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From:

Sent: Wednesday, January 19, 2011 9:16:46 AM

To:

Cc:

Subject: RE: Request for assistance - Summons/collection question

The informal advice I gave on July 2, 2008 is correct. That advice dealt with situations where a taxpayer ("A") may have fraudulently transferred property to another ("B"), but the IRS cannot collect from B under section 6901 because the statute of limitations under section 6901 had expired. In that case, if the IRS issues a summons to B seeking information regarding whether the conveyance of property was fraudulent, A does not receive notice of the summons because, under section 7609(c)(2)(D)(i), the summons is issued in connection with an assessment against A and is issued in aid of collection of an assessment against A.

You sent me an email from [redacted] appearing to object to this advice. It was unclear whether [redacted] objected only in the situation discussed above or if she objected in situations where the statute of limitations on section 6901 had not expired. Regardless, if the summons is issued in aid of collection, it is excepted from the notice requirements. Section 7609(c)(2)(D) excepts from the notice requirements summonses "issued in aid of collection of (i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or (ii) the liability at law or in equity of any transferee or fiduciary of any person referred in clause (i)." Thus, if there is an assessment against A, the IRS may issue a summons to B to aid of the collection of that liability without sending A notice of the summons. Similarly, if B is found by a court judgment to be a transferee or fiduciary of A or the IRS has assessed against B as a transferee of A, the IRS may issue a summons to aid in the collection of that liability without providing notice to A or B. However, if B has not been found by a judgment rendered to be a transferee or fiduciary of A or the IRS has not assessed against B as a transferee, and the IRS issues a summons to A or another third party ("C") solely to determine whether B is a transferee of A under section 6901, then the IRS will need to provide B with notice of a summons to A or C.

This conclusion is consistent with IRM 25.5.6.5.1(2), cited by [redacted] in [redacted] email, which draws these same distinctions. The reason my prior informal advice is also consistent can be found in the IRM 25.5.6.5.1(1) Note which states:

A fraudulent conveyance investigation or a nominee lien investigation will not result in a new, separate assessment against a person other than the taxpayer whose liability the Service is trying to collect. Thus, summonses issued to pursue fraudulent conveyance or nominee lien investigations are excepted from the notice requirement by section 7609(c)(2)(D)(i) so long as the Service has assessed against the taxpayer the liabilities it seeks to collect.

If you have any further questions on this topic, feel free to contact me.